

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

*In Re: General Motors LLC Ignition Switch
Litigation*

Case No.: 14-MD-2543

**APPLICATION FOR APPOINTMENT OF
BONNETT FAIRBOURN FRIEDMAN &
BALINT PC TO PLAINTIFFS' EXECUTIVE
COMMITTEE**

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Pursuant to Part II of the Court's Order No. 5 (Dkt. 70), Bonnett, Fairbourn, Friedman & Balint ("BFFB") hereby applies for appointment to the Plaintiffs' Executive Committee and the undersigned respectfully requests the opportunity to address the Court at the August 11, 2014 Initial Conference to present my qualifications to serve on the Executive Committee. BFFB represents owners of vehicles adversely impacted by a known defect in their Electronic Power Steering ("EPS") that may cause an unanticipated sudden loss of power steering while the vehicles are being driven.¹ As explained below, the EPS defect is caused by failures in different electronic systems than the well-publicized ignition switch defect that forms the basis for the vast majority of constituent cases in these MDL proceedings. Some of the recalled GM vehicles exhibit both EPS and ignition switch defects, while others are impacted only by the EPS defect. Accordingly, given the separate technological origin of the EPS defect (likely involving different documents and witnesses and requiring different expert analysis) and the potential for conflicting theories of causation, appointment to the Plaintiffs' Executive Committee of counsel representing EPS defect plaintiffs will ensure that the interests of owners of vehicles recalled for the EPS defect will be fully and adequately represented.

Also, as explained below, BFFB has extensive experience in complex commercial class action litigation, including federal multidistrict litigation, and likewise has extensive experience in class actions involving automotive technological issues. BFFB has demonstrated its ability and willingness to work cooperatively with other counsel in major class action cases and likewise has the demonstrated ability to devote all financial and staffing resources necessary to help prosecute these actions.

I. BFFB Should Be Appointed to Represent Plaintiffs Affected By the EPS Defect

The EPS defect is distinct from the ignition switch defect challenged in most of the cases consolidated in these MDL proceedings. While the electronic power steering system may shut

¹ On July 22, 2014, *Stevenson v. GM*, No. 1:14-cv-05137. On July 22, 2014, was transferred to the MDL for consolidation or coordination. (Dkt. 6). BFFB also is also counsel for plaintiff and the putative class in *Jones v. G.M., Inc.*, No. _____, filed on or about July 28, 2014.

down as a result of the ignition switch defect, a loss of power steering also may result from the EPS defect caused by system failures unrelated to the ignition switch defect. Given their different etiologies, it is likely that claims arising from the EPS and ignition defects will involve different documentary evidence, witnesses, technological issues and expert testimony.

The GM models affected by the EPS defect overlap but are not identical to those affected by the ignition switch defect. For those overlap models, there may be conflicting theories on the cause of power steering loss. In *Stevenson*, BFFB represents a plaintiff whose vehicles was recalled for both the ignition switch and EPS defects. In *Jones*, BFFB represents a putative class of plaintiffs who purchased cars that were recalled for EPS defect but were *not* recalled for an ignition switch defect. These vehicle owners' claims do not overlap with any ignition switch claims.

Currently, BFFB is not aware of any other action in this MDL on behalf of these non-overlap customers. Because BFFB represents plaintiffs in EPS defect cases involving both overlapping and non-overlapping vehicles, appointment of BFFB to the Plaintiffs' Executive Committee would ensure that owners of vehicles recalled for the EPS defect are fully, fairly and adequately represented.

II. Qualifications of Bonnett, Fairbourn, Friedman & Balint

Over the last twenty years, Bonnett, Fairbourn, Friedman & Balint has successfully handled over 100 class action lawsuits in state and federal courts. The firm has represented consumers and victims in a wide range of class action proceedings, including actions alleging antitrust claims, securities fraud, civil rights claims and consumer fraud and, importantly, in major class actions involving automotive technology issues.

Founding member of the firm, Andrew Friedman, leads the firm's class action practice. Mr. Friedman has substantial experience representing plaintiffs in major nationwide and multidistrict litigations. Mr. Friedman served, along with other members of the firm, on the court-appointed Executive Committee in the *Prudential Limited Partnerships Multi-District Litigation*, representing investors in limited partnerships sponsored by Prudential Securities. This

action, which alleged racketeering and securities fraud claims on behalf of a nationwide class, resulted in a settlement providing more than \$125 million in benefits to defrauded investors. Mr. Friedman also served as co-lead counsel representing non-MD health care providers in *In re Managed Care Litigation*, an MDL proceeding against major managed care companies seeking recovery for allegedly improper claims payment practices. Mr. Friedman and his co-counsel secured settlements against CIGNA (\$72 million) and Humana, Inc. (\$20 million) in these MDL proceedings. Mr. Friedman also served as co-lead counsel for the certified nationwide plaintiff classes in *In re Conseco Life Insurance Company Cost of Ins. Litig.*, MDL 1610 (C.D. Cal.). The suit charged that Conseco breached the terms of life insurance policies owned by over 90,000 class members. After nearly two years of litigation against an entrenched adversary, the class recovered over \$400 million in damages.

Patricia Syverson, a firm shareholder, also has extensive class action experience representing plaintiffs in major class actions involving automobile repair and diminished value claims and consumer fraud matters. In March 2007, Ms. Syverson served, along with other members of the firm, as trial counsel in *Smith v. American Family Insurance Company*, a Missouri class action involving the use of imitation crash parts in repair estimates for consumers, wherein after a 3 and a half week jury trial, a unanimous jury awarded plaintiffs \$17.4 million in damages. Ms. Syverson also served, along with other members of the firm, as trial counsel in *Lebrilla v. Farmers Insurance Group, Inc.*, a multi-state class action which settled following a complete bench trial in 2006 resulting in readjustment of auto property damage claims for Farmers' insureds.

Mr. Friedman, Ms. Syverson and BFFB have also been engaged for over a decade in litigation against auto insurers, including, *inter alia*, GEICO, Nationwide, Progressive, Esurance, Allstate, Farmers, and SafeCo, insurers for failing to reimburse insureds for the diminution in value of their wrecked vehicles. Mr. Friedman's and Ms. Syverson's extensive class action experience is further detailed in their resumes attached hereto.

Through our involvement in numerous class actions involving auto-related issues, BFFB has gained valuable experience that will enable us to contribute meaningfully to this litigation, including detailed knowledge regarding the auto industry, the engineering and mechanics of auto vehicles and the manner in which defects adversely impact the value of vehicles. As a result of our experience in the automotive arena, BFFB has developed valuable relationships with highly qualified automotive experts.

In addition to BFFB's resources and experience, The Paynter Law Firm PLLC has extensive experience in complex commercial litigation and has recovered over \$100 million for small businesses and consumers since its founding. BFFB will draw on The Paynter Law Firm's resources in representing EPS claims.

III. BFFB Has Demonstrated its Ability to Work in a Cooperative Fashion with Co-Counsel for Plaintiffs

BFFB has worked effectively and cooperatively with other Plaintiffs' firms – including cases in which we have worked under the direction of other lead counsel - in dozens of class action cases over the past 20 years. We have worked cooperatively with many of the law firms who have applied for leadership positions in these MDL proceedings.

Both BFFB and The Paynter Law Firm have worked extensively and cooperatively with interim lead counsel Hagens Berman Sobol Shapiro. For example, BFFB served as co-lead and/or co-counsel with the Hagens Berman firm in a series of class action cases involving deceptive sales practices in the life insurance industry, including cases alleging claims on behalf of senior citizens who were sold deferred annuities based on allegedly misleading sales practices. Likewise, The Paynter Law Firm and Hagens Berman have extensive experience working together. Both firms served as co-lead counsel in an antitrust action against videogame maker Electronic Arts (\$27 million settlement) and are currently requesting joint appointment as co-lead counsel in an action against the NCAA alleging violations of student athlete publicity rights (\$60 million settlement).

We are confident of our ability to work cooperatively, efficiently and tirelessly as a member of the Plaintiffs' Executive Committee, subject to the direction, guidance and leadership of the Co-Lead Counsel ultimately appointed by the Court. BFFB and The Payntor Law Firm pledge to work cooperatively with other counsel to minimize any duplication of effort, inefficiencies and disruption in these MDL proceedings.

IV. BFFB Is Committed to Serving on the Plaintiffs' Executive Committee

In addition to its extensive class action and MDL experience, BFFB, along with its co-counsel The Paynter Law Firm, is prepared to devote all staffing and financial resources necessary to aggressively prosecute this action. BFFB has a deep class action practice -- including lawyers located in Arizona, California, Tennessee and the Washington, D.C. area -- that is comprised of 16 lawyers and 4 paralegals. BFFB has the demonstrated ability to fund the extensive expert costs and other expenses necessary to aggressively prosecute class claims. We also have the tenacity to litigate the claims asserted on behalf of the proposed class members, if necessary, for many years and through trial. By way of example, BFFB served as trial co-counsel for the classes of investors in *In re American Continental / Lincoln Savings*, MDL 834 (D. Ariz), an MDL case arising from the collapse of Lincoln Savings & Loan that achieved judgments totaling more than \$1 billion after a month-long trial. Likewise, BFFB served as trial co-counsel for the class in *In re Apollo Group Inc.*, CV-04-2147-PHX-JAT (D. Ariz.), a class action that resulted in a \$145 million jury verdict in Phoenix, Arizona. Finally, BFFB served as co-lead counsel for the class in *Negrete v. Allianz Life Insurance Co., et al.*, CV-05-6838 (CAS) (MANx), a class action that was litigated in the federal trial and appellate courts for more than 7 years in which BFFB advanced millions of dollars in out-of-pocket expenses on behalf of the class members.

Dated: July 28, 2014

AXELROD & DEAN LLP

By s/ Robert J. Axelrod
Robert J. Axelrod
830 Third Avenue, 5th Floor
New York, NY 10022

Tel: (646) 448-5263
rjaxelrod@axelroddean.com
Local Counsel for Plaintiff

Andrew S. Friedman
Patricia N. Syverson
Kevin R. Hanger
**BONNETT, FAIRBOURN, FRIEDMAN &
BALINT, P.C.**
2325 E. Camelback Rd. Ste. 300
Phoenix, AZ 85016
Telephone: (602) 274-1100
Fax: (602) 274-1199
afriedman@bffb.com
psyverson@bffb.com
khanger@bffb.com

Stuart M. Paynter
THE PAYNTER LAW FIRM PLLC
1200 G Street N.W., Suite 800
Washington, DC 20005
Tel.: (202) 626-4486
Fax: (866) 734-0622
stuart@paynterlawfirm.com

Attorneys for Plaintiff